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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services	)	WT Docket No. 98-20

To: The Commission

PETITION FOR RECONSIDERATION

BELLSOUTH CORPORATION

William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

C. Claiborne Barksdale
1100 Peachtree Street, NE, Suite 910
Atlanta, GA 30309-4599
(404) 249-0917

David G. Frolio
1133 21st Street, NW
Washington, DC 20036
(202) 463-4182

Its Attorneys

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PETITION FOR RECONSIDERATION

BellSouth Corporation ("BellSouth"), on behalf of its wireless affiliates and subsidiaries, hereby petitions the Commission for reconsideration of its Universal Licensing System ("ULS") *Report and Order*, WT Docket 98-20, FCC 98-234 (October 21, 1998), *summarized*, 63 Fed. Reg. 68904 (1998) ("*R&O*").

SUMMARY

BellSouth seeks reconsideration of several aspects of the *R&O* in this proceeding. In particular, BellSouth urges the Commission to:

- Eliminate the map filing requirement from the cellular rules;
- Clarify that cellular licensees may implement modifications producing SABs into expired markets, provided the SABs do not extend into unserved area;
- Eliminate the cellular-specific notification requirements in favor of the newly adopted notification rules generally applicable to wireless services;
- Remove the requirement that corporate applicants supply TIN information for officers and directors;
- Permit access to ULS via the Internet;
- Eliminate the requirement that applicants file ownership and public interest exhibits;
- Clarify that applicants may amend applications that have appeared on public notice, provided the applications will not be granted via random selection or an auction; and

- Clarify that fixed point-to-point microwave applicants need not specify a geographic area of operation in their applications.

Such changes and clarifications would further minimize filing burdens and ensure that similarly situated wireless licensees are subject to similar regulatory treatment.

I. LICENSEES USING ULS SHOULD NOT BE REQUIRED TO FILE MAPS

The Commission should reconsider its decision to retain the requirement that cellular licensees file 1:500,000 scale maps with certain applications. *R&O* at ¶¶150, 158. The Commission's goals in the ULS proceeding were (i) to facilitate a rapid transition to an electronic filing system, (ii) to streamline application processing, and (iii) to afford parties a quick and economical process to file applications. *R&O* at ¶ 20. One of the purported benefits of ULS was that it would create a paperless application environment for wireless services. The Commission noted that "ULS will . . . permit the electronic filing of data required to create maps of proposed and existing service areas."[1] A number of parties urged the Commission to eliminate the burdensome and expensive map filing requirement imposed on cellular licensees.[2]

Although the Commission agreed that the map filing requirement should be eliminated as soon as possible, it decided to retain the requirement until all map data currently on file with the Commission is integrated into the ULS mapping utility.[3] Given the Commission's desire to move to a paperless, more economical application processing system, BellSouth submits that the map

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[1] *Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, *Notice of Proposed Rulemaking*, 13 F.C.C.R. 9672, ¶5 n.3 (1998) ("*NPRM*").

[2] AirTouch Comments at 10; BellSouth Comments at 7; FCBA Reply Comments at 13-14.

[3] *R&O* at ¶¶150, 158. The Wireless Telecommunications Bureau first announced its intention to eliminate the map filing requirement in favor of an electronic mapping utility more than two years ago. *WTB is on Its Way to a Paperless Environment*, FCC News Release (May 16, 1996). BellSouth is concerned that absent immediate elimination of the map filing requirement, the necessary information will not be integrated into the ULS mapping utility for years.

requirement should be immediately eliminated. Maps contain non-essential, duplicative information. The Commission itself has recognized that maps are for depiction purposes only and that the position of CGSA boundaries is determined by the coordinates and technical information contained in the schedules associated with FCC forms, not the maps associated with the applications.[4]

One of the primary purposes of maps in recent years was to establish which areas were available for licensing pursuant to the Commission's unserved area rules. The vast majority of cellular markets have been available for unserved area licensing for quite some time, however, and maps depicting the CGSAs of existing systems are currently on file with the Commission. Now that the time sensitive unserved area filing windows in most cellular markets have expired, it is not unreasonable to require prospective licensees to determine what areas are unserved in a market by comparing current maps with technical data contained in applications filed in the interim period between elimination of the map filing requirement and implementation of the ULS mapping utility.[5]

Whereas an FCC application and associated technical data can be generated by a licensee with relative ease, the requirement that cellular licensees submit 1:500,000 scale maps is quite costly and time consuming. In many cases, the CGSA, proposed SAB, and cell site locations must be manually placed on a master 1:500,000 scale map. Because such maps are "oversize" documents that cannot generally be reproduced on standard office copying equipment, they must be transported to a specialized reproduction outfit to make copies of the master for submission to the FCC.

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[4] *See Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service*, CC Docket No. 90-6, *Further Memorandum Opinion and Order on Reconsideration*, 12 F.C.C.R. 2109, 2123 (1997); *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 F.C.C.R. 7183, 7187 (1992); *Second Report and Order*, 7 F.C.C.R. 2449, 2454 (1992).

[5] Regardless of whether the Commission eliminates the map filing requirements, the Commission should clarify how cellular licensees are to submit system information update filings via ULS.

Elimination of the map filing requirement will eliminate this burdensome and costly process and is consistent with the Commission's goals of a paperless application filing system. Accordingly, the Commission should reconsider its decision to retain the requirement.

II. THE COMMISSION SHOULD AMEND SECTION 22.165(e) TO CLARIFY THAT LICENSEES MAY CAUSE SABS TO EXTEND INTO EXPIRED MARKETS PROVIDED THE SABS DO NOT EXTEND INTO UNSERVED AREA

In the ULS *R&O*, the Commission revised Section 22.165(e) of its rules to specify when a licensee may add transmitters with contours that extend beyond the licensee's authorized CGSA. As amended, the rule implies that a licensee is *precluded* from adding transmitters after the five-year build-out period if those transmitters would produce an SAB extending beyond the licensee's authorized CGSA. This would be inconsistent with Section 22.912(b) of the Commission's rules which expressly states:

> licensees of cellular systems on the same channel block in adjacent cellular markets may, *at any time*, enter into contracts with applicants or other licensees to allow SAB extensions into their CGSA only (not into unserved areas).

47 C.F.R. § 22.912(b) (emphasis added). Moreover, new Section 22.165(e) also indicates that licensees may not add transmitters that would produce *de minimis* extensions into adjacent markets for which the five-year build-out period has not expired. Section 22.912(a), however, expressly authorizes such extensions.

Accordingly, Section 22.165(e) should be amended to make clear that:

- cellular transmitters that produce SABs extending beyond a licensee's previously authorized CGSA are permissible after the five-year build-out period, provided the SABs do not extend into unserved area and the adjacent licensee consents to the extension;
- *de minimis* extensions do not require the consent of adjacent licensees and are permissible during the five-year build-out period.

BellSouth proposes that Section 22.165(e) be amended to read as follows:

> *Cellular Radiotelephone Service.* The service area boundaries ("SABs") of additional transmitters, as calculated by the method set forth in Section 22.911(a), may extend into adjacent markets if the SABs: (i) extend into the CGSA of the adjacent licensee(s) with the consent of the adjacent licensee(s); (ii) extend into previously approved extension areas; or (iii) extend into area not yet served by the adjacent licensee(s), during the five-year build-out period of the adjacent market. Licensees must notify the Commission (FCC Form 601) of any transmitters added under this section that cause a change in the CGSA boundary. If the addition of transmitters involves a contract service area boundary ("SAB") extension (see sec. 22.912), the notification must include a statement as to whether the five-year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed. If the build-out period for the market into which the SAB extends has expired, the applicant must provide a certification that the SAB does not extend into unserved area or request the appropriate waiver.

III. THE COMMISSION SHOULD ELIMINATE ITS CELLULAR-SPECIFIC NOTIFICATION REQUIREMENTS IN FAVOR OF ITS GENERAL NOTIFICATION RULES

As the Commission has recognized, "the implementation of ULS provides a unique opportunity to replace . . . service-specific rules with a single set of uniform standards." *R&O* at ¶58. Consistent with this recognition, BellSouth urges the Commission to reconsider its adoption of differing general and cellular-specific notification periods. *See* 47 C.F.R. §§ 1.946, 1.947, 22.165, 22.946.

Construction Notification. Pursuant to Section 1.946(d), when a wireless licensee commences service or operations within the construction period, the licensee must notify the Commission within 15 days *of the expiration of the applicable construction or coverage period.* 47 C.F.R. § 1.946(d). The Commission adopted a specific rule for cellular, however, requiring that the notification be filed within 15 days of *satisfaction of the construction obligation.* 47 C.F.R. § 22.946. The filing requirement for most wireless licensees under the general rule is triggered by the

expiration of the construction period, whereas the filing requirement for cellular licensees is triggered by the actual completion of construction. Thus, if a non-cellular wireless licensee completes construction and commences operation on the first day of a one year construction period, the licensee has one year and 15 days within which to notify the FCC that it has satisfied its construction obligation — *381 days*. A similarly situated cellular licensee, on the other hand, would be required to file the same notification on *day 16*.

Minor Modification Notifications. Similarly, the *R&O* sets forth a new general minor modification rule for wireless services specifying that licensees must notify the Commission of minor modifications within 30 days of implementation of such modifications. 47 C.F.R. § 1.947(b). The Commission retained, however, the cellular-specific minor modification rule which requires cellular licensees to notify the Commission within 15 days of implementing certain minor modifications. 47 C.F.R. § 22.165.

BellSouth urges the Commission to eliminate both cellular-specific notification periods and permit cellular licensees to submit their notifications within the periods specified in the generally applicable rule. No justification has been provided for treating cellular licensees differently from similarly situated licensees.

IV. SUBMISSION OF TAXPAYER IDENTIFICATION NUMBERS SHOULD NOT BE REQUIRED FOR OFFICERS AND DIRECTORS

Pursuant to the Debt Collection Improvement Act of 1996, P.L. 104-134, 110 Stat. 1321 (1996) (codified at 31 U.S.C. § 3701) (hereinafter "DCIA"), the FCC must collect the Taxpayer Identification Number ("TIN") of any person doing business with the agency. *See* 31 U.S.C. § 3701(c)(1); *R&O* at ¶132. The DCIA specifies that a person is "doing business" with the FCC if it is "an applicant for, or recipient of, a Federal license, permit, right-of-way, grant or benefit

payment." 31 U.S.C. § 3701(c)(2)(B); *R&O* at ¶138. Consistent with this obligation, the Commission has required wireless licensees and applicants to supply TIN information on applications. In the *R&O*, the Commission broadens the scope of its DCIA TIN collection information to include the TINs for officers and directors of applicants and licensees. The Commission should reconsider this decision.

The DCIA only requires the collection of TINs from applicants and licensees. The Commission should not expand this collection requirement without a compelling justification. No such justification exists here. First, the Commission may collect information about individuals only if it is "relevant and necessary to accomplish a purpose of the agency required to by accomplished by statute." 5 U.S.C. § 552a(e)(1). No statute requires the Commission to collect TINs of officers and directors of FCC applicants and licensees. The DCIA only requires TINs of applicants and licensees. Officers and directors of corporate applicants and licensees are not generally personally liable for their corporations' debts. Accordingly, DCIA does not authorize the collection of this information about individuals who are neither licensees nor applicants.

Second, the TIN of an officer or director is synonymous with his or her social security number. As numerous parties commented, the collection of social security numbers raises serious privacy concerns.[6] The ramifications of obtaining and misusing a social security number are great. Financial and other personal information can often be obtained via social security numbers.

Additionally, a person's "identity" can be "stolen" if their social security number can be obtained. The collection of this information presents privacy risks even if the data is not routinely made public. For example, it is not uncommon for the Commission to mis-route applications and

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[6] *See* The American Radio Relay League, Incorporated Comments at 16-17; Bennet & Bennet, PLLC Comments at 9; Forest Industries Telecommunications Comments at 17-18; National Spectrum Managers Association Comments at 10.

licenses, even those containing TINs. Indeed, BellSouth has received misdirected copies of licenses and applications associated with other licensees in the past. The comments indicate that this is not an isolated occurrence.[7]

Third, the ULS *NPRM* provided no notice that the Commission was proposing to expand its TIN collection program to include officers and directors of applicants and licensees.[8] Rather, the NPRM merely proposed to require all applicants and licensees to supply their TINs.

For the foregoing reasons, the Commission should reconsider its decision to require the submission of TIN information for officers and directors of licensees and applicants.

V. THE COMMISSION SHOULD ELIMINATE ITS REQUIREMENT THAT UNSERVED AREA APPLICATIONS CONTAIN AN OWNERSHIP EXHIBIT

Pursuant to Section 22.953(a)(5), a cellular unserved area applicant is required to submit an ownership exhibit with its application. This requirement is unnecessary and duplicative, however, because cellular unserved area applicants are required to submit a Form 602 in connection with any initial application. 47 C.F.R. § 1.919. The Form 602, in turn, requests all the ownership information contemplated by the cellular rules. Accordingly, the Commission should eliminate the duplicative requirement that cellular unserved area applicants submit an ownership exhibit with their applications. Elimination of this redundant requirement is consistent with the Commission's streamlining objectives and would reduce applicants' filing burdens by eliminating the need to both prepare and scan or electronically attach an exhibit to a ULS application.

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7 *See* National Spectrum Managers Association Comments at 10.

8 *NPRM* at ¶¶71-75.

VI. THE COMMISSION SHOULD ELIMINATE THE NEED FOR A PUBLIC INTEREST STATEMENT TO BE ASSOCIATED WITH ULS APPLICATIONS

In WT Docket No. 94-148, the Commission determined that common carrier microwave licensees should not be required to submit a public interest statement with their applications.[9] According to the Commission, a public interest exhibit is unnecessary for a license grant because the information supplied on application forms is sufficient to make a public interest determination.[10] The Commission also noted that it has the authority to require an applicant to supply a public interest showing in situations where the information is necessary,[11] such as in the context of mergers. This rationale is equally applicable to other wireless services subject to ULS. Accordingly, the Commission should eliminate the need for licensees filing via ULS to submit public interest statements with their applications.

VII. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO REQUIRE PLEADINGS AND BRIEFS TO BE FILED IN DUPLICATE

The Commission has decided to eliminate the requirement that parties submit paper and/or microfiche copies of applications and related pleadings, with one exception. *See R&O* at ¶36. The Commission requires that parties manually filing pleadings and briefs submit an original and one copy of such documents. 47 C.F.R. § 1.51. This requirement is inconsistent with its treatment of other manually filed materials. The Commission specifically eliminated the need for applicants to submit duplicate copies of applications submitted manually, requiring only an original because all such documents would be scanned by the FCC and stored electronically. *R&O* at ¶35. Briefs and

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9 *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Commission's Rules to Establish a New Part 101*, WT Docket No. 94-148, *Report and Order*, 11 F.C.C.R. 13449, ¶9 (1996).

10 *Id.*

11 *Id.*

other pleadings can also be scanned by the Commission. Accordingly, the requirement that such documents be filed in duplicate should be eliminated by the Commission on reconsideration.

VIII. ULS SHOULD BE ACCESSIBLE FROM THE INTERNET

Despite the comments of BellSouth and others suggesting that ULS be made accessible via the Internet,[12] the Commission opted to limit access to direct connections over its wide area network ("WAN"). *R&O* at ¶¶ 5. Because of the significant networking problems that are created by this access method, the Commission should reconsider its decision.

By permitting ULS access only via the FCC's WAN, which in turn is only accessible via a dial-up PPP connection, the Commission precludes access for certain computers connected to the Internet or to certain types of local area networks ("LAN").[13] Some computers and operating systems are not capable of maintaining separate multi-homed, TCP/IP connections, for example. Thus, a given computer may be unable to establish a connection to the FCC WAN because it already has a TCP/IP connection to a LAN or the Internet. At least one commenter noted that the Commission's connection method required the installation of a modem bank and a new phone line, rather than simply using the commenter's existing network.[14]

Moreover, the method for ULS access chosen by the Commission requires connection at a much slower bit rate than the high speed Internet access that is increasingly found in offices. The result is that it takes longer for applicants to draft and submit applications than would be the case if Internet access were available. Accordingly, BellSouth urges the Commission to maximize the benefits of ULS by reconsidering its decision not to permit encrypted connection to the ULS through

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[12] BellSouth Comments at 5-7; FCBA Comments at 11-13; FCBA Reply Comments at 9-10; Forest Industries Telecommunications Comments at 7-8; UTC Comments at 3-4.

[13] *See* BellSouth Comments at 5-6.

[14] Forest Industries Telecommunications Comments at 7-8

the Internet via a secure server. This would allow any Internet-connected computer to be used for ULS research or for application entry. The security of the Commission's computer network can be protected by appropriate use of firewalls and similar security devices, as has been done in connection with electronic filing of comments.[15]

IX. SECTION 1.927 SHOULD BE AMENDED TO CLARIFY THAT APPLICANTS MAY FILE AMENDMENTS TO APPLICATIONS THAT HAVE APPEARED ON PUBLIC PROVIDED THE APPLICATIONS WILL NOT BE GRANTED VIA RANDOM SELECTION OR AUCTION

New Section 1.927 states that an applicant may file amendments to pending applications provided the application has not appeared on public notice. Consistent with current Section 22.122, the Commission should clarify that the appearance of an application on public notice precludes further amendment only if the application relates to a license that must be granted via "a random selection or competitive bidding process." *See* current 47 C.F.R. § 22.122. No purpose would be served by precluding applicants from amending applications that are not subject to competitive bidding or a random selection process.

X. THE COMMISSION SHOULD CLARIFY THAT FIXED POINT-TO-POINT MICROWAVE APPLICANTS ARE NOT REQUIRED TO SPECIFY AREA OF OPERATION

The new forms adopted by the FCC for ULS purposes require all applicants for Multiple Address System ("MAS"), Digital Electronic Message Service ("DEMS"), and permanent fixed point-to-point microwave licenses to specify a geographic area of operation. FCC Form 601, Schedule I, Supplement 1, Item 16. This requirement does not make sense for point-to-point operations. By definition, point-to-point microwave operations are limited to communications between two defined points. Other services such as MAS, on the other hand, are licensed to operate

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[15] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, *Report and Order*, 13 F.C.C.R. 11322 (1998).

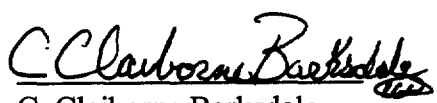
within broad geographic areas. Accordingly, the Commission should clarify that the requirement to specify the geographic area of operation is inapplicable to point-to-point licensees and applies only to licensees authorized to operate within a broad geographic area.

CONCLUSION

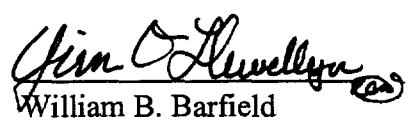
For the forgoing reasons, BellSouth urges the Commission to reconsider and clarify the ULS *R&O* to further minimize filing burdens and ensure that similarly situated wireless licensees are subject to similar regulatory treatment.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

C. Claiborne Barksdale
1100 Peachtree Street, NE, Suite 910
Atlanta, GA 30309-4599
(404) 249-0917

By: 

William B. Barfield
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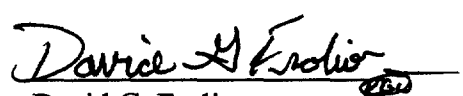
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

By: 

David G. Frolio
1133 21st Street, NW
Washington, DC 20036
(202) 463-4182

Its Attorneys

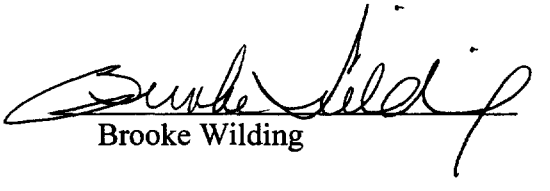
Date: January 13, 1999

CERTIFICATE OF SERVICE

I, Brooke Wilding, hereby certify that on this 13th day of January 1999, copies of the foregoing "Petition for Reconsideration of BellSouth" in WT Docket No. 98-20 were served by hand on the following:

Roger Noel
Chief, Licensing and Technology
Analysis Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
Room 8643
Washington, D.C. 20554

Steven Weingarten
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
Room 7023
Washington, D.C. 20554



Brooke Wilding